DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Reclassify the Snail Darter (Percina Tanasi) From an Endangered Species to a Threatened Species and Rescind Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the snail darter (*Percina tanasi*) from an endangered species to a threatened species which the Service believes better reflects its present status. This decision is based on the results of recent snail darter research and on the recommendations of the Snail Darter Recovery Team and the conclusions of the Service's approved Snail Darter Recovery Plan (U.S. Fish and Wildlife Service, 1983a). The snail darter is presently known from only six Tennessee River tributaries and from the main stem of the Tennessee River near the mouth of three tributaries. Most of these populations are extremely small and subject to threats to their continued existence. Neither the Service nor the Snail Darter Recovery Team believes sufficient evidence is presently available to allow the species to be removed from Endangered Species Act protection. The Service also proposes to rescind presently designated snail darter critical habitat on the Little Tennessee River, Loudon County, Tennessee. This area no longer functions as snail darter habitat. It was flooded by the Tellico Reservoir when a Federal law was passed exempting the Tellico Project from Endangered Species Act consideration. Reclassification of the species and rescinding critical habitat would not remove the Act's protection as the snail darter would continue to be protected as a threatened species. Comments and information pertaining to this proposal are sought from the public.

DATE: Comments from all interested parties must be received by April 23, 1984. Public hearing requests must be received by April 6, 1984.

ADDRESSES: Interested persons, organizations, agencies, and local governments are requested to submit comments to the Field Supervisor, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville,

North Carolina 28801. Comments and materials relating to this proposal are available for inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 8/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The snail darter was first collected in August 1973 in the lower reaches of the Little Tennessee River, Loudon County, Tennessee, and was described by Dr. David Etnier (1976) as *Percina (Imostoma) tanasi*. The species is characterized as a robust fish, rarely exceeding 3.4 inches. The background color of the upper portion of the fish's sides is brown with a faint trace of green. Four saddle-like marks cross the back of the fish. The lower part of the sides are lighter and interspersed with dark blotches.The belly is white and the upper portion of the head is dark brown. The cheeks are mottled brown and interspersed with traces of yellow. The fish inhabits shoal areas where the adults spawn. The hatchling young drift downstream and later return to the shoal areas.

The snail darter was listed as an endangered species on October 9, 1975 (40 FR 47506). Critical habitat on the Little Tennessee River, from river mile 0.5 to river mile 17, Loudon County, Tennessee, was designated on April 1, 1976 (41 FR 13926–13928). On September 25, 1979, a Federal law exempted the Little Tennessee River Tellico Reservoir Project from Endangered Species Act consideration. The Reservoir was subsequently completed and a reproducing snail darter population no longer exists in the Little Tennessee River.

When the species was listed and its critical habitat designated the only known population was threatened by the imminent completion of Tellico Dam and the flooding of the fish's Little Tennessee River habitat. Prior and subsequent to the completion of the Tellico Reservoir project, snail darters were introduce to other streams in the Tennessee River Valley. These introductions thus far have proven successful only in the Hiwassee River, Polk County, Tennessee.

Snail darters were found in the Tennessee River, Loudon County, Tennessee, near the mouth of the Little Tennessee River in 1979. Subsequently, they were discovered in South Chickamauga Creek, Hamilton County, Tennessee, in 1980 and later in Catoosa County, Georgia. These discoveries led to additional searches in the Tennessee River and its tributaries. These searches resulted in the discovery of snail darters inhabiting three other Tennessee River tributaries (Sewee Creek, Meigs County, Tennessee; Sequatchie River, Marion County, Tennessee; and Paint Rock River, Jackson and Madison Counties, Alabama), and the main stem of the Tennessee River near the mouth of two tributaries, South Chickamauga Creek (Nickajack Reservoir, Marion County, Tennessee) and Sequatchie River (Guntersville Reservior, Marion County, Tennessee). Review of these data in 1982 by the Snail Darter Recovery Team and the Service during its recovery planning process led the Service to determine that the species could be reclassified from endangered to threatened status. Neither the Recovery Team nor the Service felt sufficient evidence was available for the species to be removed entirely from Endangered Species Act protection.

On July 21, 1983 (48 FR 33328–33329), the Service published an advance notice of a proposed rule to reclassify or delist the snail darter. That notice:

(1) Reaffirmed the Service's conclusion that the species, based on available data, could not be removed entirely from Endangered Species Act protection, but that it could be safely reclassified to threatened status;

(2) Presented the three alternatives from the Service's approved Snail Darter Recovery Plan by which the species could be judged eligible for removal from the list of endangered and threatened wildlife; and

(3) Stated that the Service was involved in an extensive snail darter survey of Tennessee River tributaries aimed at satisfying Alternative B in the Snail Darter Recovery Plan. That criterion states that the species shall be considered recovered when:

> * * * more Tennessee River tributary populations of the species are discovered and existing populations are not lost. The number of additional populations needed to meet this criteria (sic) would vary depending on the status of the new populations, but two populations similar to Sewee Creek, South Chickamagua Creek, or Sequatchie River populations, or one comparable to the Hiwassee River population, would denote recovery." And "No present or forseeable threats exist which could cause the species to become in danger of extinction throughout a significant portion of its range.

The Service has completed its snail darter survey (U.S. Fish and Wildlife Service, 1983b). The study confirmed that snail darters were still surviving in each of the five Tennessee River tributaries known to be inhabited by the species at the time the study was conducted. This survey did not uncover any new populations although twelve other Tennessee River tributaries were searched. However, one snail darter was found in the Little River, Blount County, Tennessee, by an independent stream survey crew (Dr. David Etnier, personal communication, September 1983). This river has been extensively surveyed in the past, and communication with biologists familiar with the species and the Little River indicates that it is unlikely that a substantial population exists there.

The Snail Darter Recovery team reviewed the results of the Service's snail darter survey at a Recovery Team meeting on September 1, 1983. The conclusions reached at that meeting were communicated to the Regional Director, U.S. Fish and Wildlife Service, Atlanta, Georgia, in a September 2, 1983, letter from the Recovery Team leader. That letter made three recommendations to the Service: (1) The snail darter could be downlisted from endangered to threatened status, (2) insufficient data were available to consider removing the species from the Federal list, and (3) the requirements for a Federal permit to collect snail darters should be retained if downlisting occurs. Subsequent to the discovery of a snail darter in the Little River, Blount County, Tennessee, Recovery Team members were contacted to determine if this find changed their recommendations regarding the snail darter's future Federal status. All team members contacted were in agreement that the find of a snail darter in the Little River did not satisfy Alternative B (see above) of the Recovery Plan. They recommended that the Service proceed with reclassifying the species to threatened status.

The July 21, 1983, **Federal Register** (48 FR 33328–33329) also solicited comments from government agencies, local governments, the scientific community, and other interested parties concerning the species' status, and environmental and other impacts of a proposal to downlist or delist the snail darter. The following is a summary of the responses received.

The Atlanta, Georgia, Regional Office of the Federal Energy Regulatory Commission responded that they were forwarding the Service's request for information to their Washington, D.C.

office for response. We received no further comments from this agency.

All three of the State conservation agencies whose states are inhabited by the snail darter, the Alabama Department of Conservation and Natural Resources, the Georgia Department of Natural Resources (GDNR), and the Tennessee Wildlife Resources Agency (TWRA) supported reclassification of the species from endangered to threatened status. Both the GDNR and TWRA further stated that insufficient data were available to make the decision to delist the species.

The Vice-President, North American Production, Conoco, Inc., commended the Service for its proposal to reclassify or delist the snail darter. He further stated that he believed it was evident the snail darter was in adequate supply for such a step.

The National Wildlife Federation supported the reclassification of the snail darter from endangered to threatened status. They concluded their letter by stating:

> * * * biological information on the snail darter indicates that the species is not in immediate danger of extinction and therefore we agree that the species should be reclassified to the threatened category. Delisting the species is not warranted at this time. The well-being of most newly discovered populations is unknown. Habitat degradation continues to propose potential threats and population monitoring, conducted over several years, will be necessary to determine the status of the fish throughout its range.

During the development of the decision to propose reclassification of the snail darter the Service reviewed two other alternatives: (1) Remove the species from the Federal list and (2) retain endangered species status for the species. The Service concluded that neither of these options was appropriate for the following reasons.

The species, by virtue of its distribution, no longer fits the Endangered Species Act definition of endangered which is defined as: "* * * any species which is in danger of extinction throughout all or a significant portion of its range * * *" Conversely, due to threats to the species' continued existence and the scant knowledge concerning the viability of most of the known populations, it would not be in keeping with the Service's administrative responsibilities under the Act to remove the snail darter from Federal protection. Threatened status best reflects the current status of the species, i.e., a species that is likely to become an endangered species within the forseeable future throughout all or a significant portion of its range.

As part of the decision process to rescind the present critical habitat in the Little Tennessee River, Loudon County, Tennessee, the Service considered two other alternatives: (1) Maintain the present critical habitat and (2) designate critical habitat in rivers known to contain snail darter populations. The Service rejected these options for the following reasons.

A September 25, 1979 Federal law exempted the Little Tennessee River Tellico Reservoir Project from Endangered Species Act consideration. The critical habitat was subsequently inundated and is now unsuitable for snail darters. Critical habitat designation is no longer appropriate for this river reach.

The snail darter has received much notoriety. For this reason the Service believes a detailed description of the species' habitat, required during the critical habitat designation process, would draw attention to those specific areas inhabited by the species and could threaten the species by increasing the likelihood of illegal take.

Summary of Factors Affecting the Species

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act [codified at 50 CFR Part 424; under revision to accommodate 1982 amendments—see proposed rule of August 8, 983 (48 FR 36062)] set forth the procedures for reclassifying species on the Federal list. A species shall be determined to be an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors, and their application to the subject species, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historic range of the snail darter is virtually impossible to determine as essentially no preimpoundment collections were made from the main channel Tennessee River or its major tributaries. However, the Snail Darter Recovery Plan states that the species' range prior to the impoundments probably included gravel shoal habitat areas of the main channel Tennessee River and the lower reaches of its tributaries from perhaps north central Alabama upstream into eastern Tennesses. Presently, the snail darter is known from six Tennessee River tributaries and the main stem of the Tennesses River near the mouth of three tributaries.

Little River, Blout County, Tennessee. One snail darter was collected in the Little River in September 1983. This is the only specimen known from the river although the river has received considerable sampling. The specific site where the fish was taken has been sampled six times. The most recent collection (October 1983) was aimed at finding snail darters (Dr. David Etnier, personal communication, November 1983), but none were taken. This population is believed to be very small.

Little River watershed is rural and sparsely developed. The river contains a diverse assemblage of fish species which indicates quality habitat.

Tennessee River at Watts Bar Reservoir, Loudon County, Tennessee. Snail darters were discovered in Watts Bar Reservoir in 1979 and have been observed on numerous occasions since. However, it is not known if these fish represent a reproducing population or are remnants of the now extirpated Little Tennessee River population. The Little Tennessee River previously entered Watts Bar Reservoir at Tennessee River Mile (TRM) 601.1. If a population does exist in Watts Bar Reservoir it could be threatened by port facility development proposed for TRM 592.5 and TRM 600.2.

Sewee Creek, Meigs County, Tennessee. Snail darters were first collected in Sewee Creek in 1980 and have been observed in the creek every year since that time. The species has been found in concentrations nearly identical to snail darter concentrations once found in the Little Tennessee River. However, the creek section inhabited by the species is very small (5.7 miles) thus limiting the size of the total population.

Sewee Creek's habitat is probably one of the most secure of the six tributaries known to contain the snail darter. The watershed is small and mostly rural and forested.

Hiwassee River, Polk County, Tennessee. This population was introduced utilizing fish from the Little Tennessee River population. The introduction appears to be successful. Snail darters are reproducing and young-of-the year fish have been observed every year from 1976 through 1982.

The population is the largest known to exist, and according to the Snail Darter Recovery Team, the population likely numbers 3000 individuals.

Although the Hiwassee River population is large and appears to be doing well, it is not completely secure. The Hiwassee has had a history of train wrecks involving acid spills. However, recent railroad improvements should decrease the severity of any future spill. Heavy metal and pH problems in the Ocoee River, a tributary of the

Hiwassee, also represent a threat to the population. Wastewater cleanup and reforestation programs have been implemented in the Ocoee to correct the problem. If these Ocoee River watershed programs prove successful, the snail darter population will likely be more secure.

South Chickamauga Creek, Hamilton County, Tennessee, and Catoosa County, Georgia. Snail darters were found in this creek in 1980 and have been collected intermittently since then. This population appears to exist in a precarious situation. The South Chickamauga Creek watershed contains many potential threats to the species including both runoff from urban areas and industrial sites, the threat of accidental chemical spills, and effluent from a wastewater treatment plant. Growth projections for the watershed are significant. Unless the welfare of the species is considered, an increase in threats to the snail darter may be anticipated.

Tennessee River at Nickajack Reservoir, Hamilton County, Tennessee. Four snail darters were seen by scuba divers in Nickajack Reservoir near the mouth of South Chickamauga Creek in 1980. Whether this represents a resident population in the reservoir or part of the South Chickamauga Creek population cannot be determined based on available data.

There are two projects under consideration which could impact the snail darter in the reservoir. A commercial dredging operation is proposed for TRM 453–460 and a port facility is proposed for TRM 466–468. The snail darters were found nearby.

Sequatchie River, Marion County, Tennessee. This population was discovered in 1981 and has been sampled six times since. Although considerable effort has been aimed at assessing this population, only 13 snail darters have ever been observed in this river.

The Sequatchie Valley is a rural valley. However, it does contain coal reserves, and coal mining activities have brought siltation and pH problems to its tributaries. The Little Sequatchie River, a tributary of th e Sequatchie, has experienced fish kills which have been partially attributed to coal mining activity.

Tennessee Rive at Guntersville Reservoir, Marion County, Tennessee. Two snail darters were observed by scuba divers in Guntersville Reservoir area. It is not kenow if these fish represent a resident population of the main Tennessee River or if they are part of the Sequatchie River population. Snail darters in the reservoir could be impacted by a proposed dredging operation at TRM 390.3–423 and a proposed port facility at TRM 424.

Paint Rock River, Jackson and Madison Counties, Alabama. The snail darter population was found in this river in 1981 after extensive searches. A total of four days of sampling yielded only five individuals. Surveys in 1983, attempting to verify the continued existence of the species in the Paint Rock found one snail darter after seven days of searching in the same areas where the species had been previously found.

The Paint Rock River Valley is forested in the upper basin with row crops predominating in the lower basin. Stream siltations and enrichment problems associated with agricultural activities are evident and pesticides may be a threat. The river was channelized by the U.S. Corps of Army Engineers in 1966. Presently, there are some discussions in the valley that this procedure should be repeated.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The snail darter has received a tremendous amount of notoriety and this has made the fish vulnerable to illegal take. At present the species is protected by Federal and State laws which require permits for scientific collecting. The degree of protection will not change if the proposal to reclassify the snail darter to threatened status is finalized.

C. *Disease or predation.* There is no evidence of threats from dis[illegible] or predation.

D. *The inadequacy of existing regulatory mechanisms.* The Federal Endangered Species Act protects the species and its habitat through Section 7, which requires Federal agencies to ensure taht any activity they authorize, fund, or carry out is not likely to jeopardize the continued existence of the species. Thesee provisions of the Act would continue to protect the snail darter if the species is reclassified to threatened status. The States of Alabama, Georgia and Tennessee prohibit take without a scientific collecting permit.

E. *Other natural or manmade factors affecting its continued existence.* There are no other factors, natural or manmade, known to be affecting the continued existence of the snail darter.

Critical Habitat

The Endangered Species Act in Section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable the Secretary shall designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or thereatened. The Service finds the designation of critical habitat is not prudent for this species. The snail darter has received a tremendous amount of notoriety. Because of this, the Service believes that publication of critical habitat descriptions would make the species vulnerable to illegal taking and increase the law enforcement problem. It might also subject the species to deliberate vandalism. Therefore, it would not be prudent to determine critical habitat for the snail darter at this time.

The Service believes the present critical habitat in the Little Tennessee River from river mile 0.5 through river mile 17 should be remove from Endangered Species Act protection. The area has been flooded by Tellico Reservoir and no longer provides suitable habitat for the snail darter population.

Available Conservation Measures

As there are no special rules being proposed with the snail darter reclassification, the species generally would continue to receive the same Endangered Species Act protection under a threatened species category that it now receives as an endangered species although there would be a slightly broader range of permits that would be available for activities involving threatened species, 50 CFR 17.32. The protection provisions of the Act for endangered and threatened species are reviewed below.

The Act and endangered and threatened species regulations already published in the June 24, 1977, **Federal Register** (42 FR 32372), set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions are found in §§ 17.21 and 17.31 of 50 CFR and are summarized below.

These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Threatened

species permits are available for scientific purposes, to enhance the propagation or survival of the species, for zoological exhibition, for educational puposes, for incidental take, or for special purposes consistent with the purposes of the Act.

Section 7(a)(2) of the Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. The snail darter is presently protected under section 7(a)(2) of the Act as an endangered species. If this proposal is made final, the species will continue to receive protection under Section 7(a)(2) as a threatened species.

Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, private interests, or any other interested part concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

1. Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

2. The location of and the reason why any habitat of this species should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

3. Additional information concerning the range and distribution of this species; and

4. Current or planned activities in the subject areas and their possible impacts on the snail darter.

Final promulgation of regulations on the snail darter will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321).

Author

The primary author of this proposed rule is Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision by the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act, *PLF v. Andrus*, 657 F.2d 829, (6th Cir. 1981).

References

Etnier, David A. 1976. *Percina tanasi*, a new percid fish from the Little Tenessee River, Tennessee. Proc. Biol. Soc. Wash. 88(44): 469–645.

U.S. Fish and Wildlife Service. 1983a. Snail Darter Recovery Plan. U.S. Fish and Wildlife Service, Atlanta, Georgia. 46 pp.

U.S. Fish and Wildlife Service. 1983b. Snail Darter Survey (July, August, and October 1983). U.S. Fish and Wildlife Service, Asheville, North Carolina. 45 pp.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to revise Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to revise § 17.11(h) by changing the status of the snail darter under "FISHES" from endangered (E) to threatened (T) and deleting the critical habitat citation on the List of Endangered and Threatened Wildlife so that the entry for this species reads as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*	*		
Darter, snail	*Percina tanasi*	U.S.A. (AL, GA, TN)	Entire	T	12	NA	NA
*	*	*	*	*	*		

3. It is further proposed to revise § 17.95(e) for "Fishes" by removing critical habitat for the snail darter.

Dated: February 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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